

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**ESTATE OF RAMON SEDILLO, MALLORY  
SEDILLO, in her individual capacity, and MALLORY  
SEDILLO as guardian for her minor child RAYMOND  
RAY SEDILLO,**  
Plaintiffs,

vs.

No. 1:13-cv-00448-JAP/RHS


**FULL SPECTRUM SMOKE SHOP, INC., MATTHEW  
BEASLEY, PATRICK PEREA, CITY OF ALBUQUERQUE,  
and OFFICER ROBERT SIMMONS, OFFICER PERRY  
BRADLEY, and OFFICER VICTOR HERNANDEZ, in  
their official and individual capacities,**  
Defendants.

**MEMORANDUM OPINION AND ORDER**

On September 5, 2013, Defendant City of Albuquerque moved to dismiss Plaintiffs' § 1983 municipal liability claims. *See* DEFENDANT CITY OF ALBUQUERQUE'S MOTION AND MEMORANDUM TO DISMISS PLAINTIFFS MUNICIPAL LIABILITY CLAIMS AGAINST CITY OF ALBUQUERQUE (Doc. No. 33) (Motion). Plaintiffs have not responded and have thereby consented to the Court's granting the Motion. *See* D.N.M. LR-Civ. 7.1(b) ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). Moreover, after reviewing the Motion and the relevant law, the Court finds that Defendant's Motion is well-founded; Plaintiffs' have failed to state a municipal liability claim for which relief can be granted. Under 42 U.S.C. § 1983, a municipality may only be held liable for a constitutional tort of its employee, if a municipal custom or official municipal policy was the "moving force" behind the constitutional tort. *Schneider v. City of Grand Junction Police Dep't*, 717 F.3d 760, 770 (10th Cir. 2013) (citing *Bd. of the County Comm'rs v. Brown*, 520 U.S. 397, 404 (1997)). In the complaint,

Plaintiffs fail to make any allegations tying the allegedly unconstitutional behavior of the named Albuquerque police officers to the City of Albuquerque's policies or customs.

IT IS THEREFORE ORDERED that DEFENDANT CITY OF ALBUQUERQUE'S MOTION AND MEMORANDUM TO DISMISS PLAINTIFFS MUNICIPAL LIABILITY CLAIMS AGAINST CITY OF ALBUQUERQUE (Doc. No. 33) is granted. The Court will dismiss, by a final judgment on and order of dismissal of municipal liability claims, Plaintiffs' § 1983 claims against the City of Albuquerque with prejudice.



SENIOR UNITED STATES DISTRICT JUDGE